



The Telecommunications Association

EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

TEL +1-202-872-0030  
FAX +1-202-872-1331  
Direct Dial  
202-872-0031, ext. 216  
jsheldon@utc.org

RECEIVED

APR 24 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

April 24, 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W. Room 222  
Washington, D.C. 20554

Ex Parte

Re: WT Docket No. 94-148

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Commission's Rules, this is to notify you that UTC, The Telecommunications Association (UTC) delivered the attached written presentation to the staff of the Wireless Telecommunications Bureau in connection with WT Docket No. 94-148, on the creation of new Part 101 of the Commission's Rules.

Two copies of this notice are submitted for filing in this docket.

If there are any questions concerning this matter, please let me know.

Very truly yours,

Jeffrey L. Sheldon  
General Counsel

Attachment

041  
FILE



The Telecommunications Association

TEL +1-202-872-0030  
FAX +1-202-872-1331  
Direct Dial  
202-872-0031, ext. 216  
[jsheldon@utc.org](mailto:jsheldon@utc.org)

April 24, 1998

Ms. D'wana Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
2025 M Street, NW Room 8010  
Washington, D.C. 20554

Ex Parte

Re: Private Microwave Sharing  
WT Docket No. 94-148

Dear Ms. Terry:

This is to provide further information and clarification of the relief requested in UTC's "Petition for Reconsideration/Clarification," filed June 27, 1996, in the above-captioned docket on the establishment of a new Part 101 governing terrestrial microwave fixed radio services. In its petition, UTC requested reconsideration of the Commission's decision not to alter the traditional prohibition on sharing of private microwave capacity by private users and common carriers. In order to clarify the limited scope of the relief requested, UTC offers the following:

Prior to consolidation of Rule Parts 21 and 94 in WT Docket No. 94-148, as well as the consolidation of most microwave frequency bands above 3 GHz in ET Docket No. 92-9, the rules imposed significant regulatory distinctions between "common carrier" and "private" microwave facilities. Each type of system was generally restricted to certain frequency bands or channels; private users were limited to sharing capacity with other eligible private users for the transmission of non-common carrier traffic; and common carrier facilities could not be used for non-common carrier purposes.

Most microwave bands were consolidated in the Second Report and Order in ET Docket No. 92-9, 8 FCC Rcd 6495 (1993), and the prohibition on use of common carrier transmitters for non-common carrier purposes was eliminated in the Report and Order in WT Docket No. 94-148, 11 FCC Rcd 13449 (1996). However, the Commission declined the opportunity to eliminate the remaining restriction on sharing of private microwave capacity, even as it stated that it was

"open" to revisiting the issue if anyone expressed interest in further pursuing it. 11 FCC Rcd at 13467.

UTC remains interested in pursuing this issue, and urges the Commission to take the opportunity, on reconsideration of this docket, to eliminate this anachronistic prohibition on the intermingling of common carrier and private microwave traffic on the same microwave facilities. By eliminating the corresponding prohibition that had appeared in Part 21, the Commission saw no inherent problem in allowing private and common carrier traffic to be transmitted on the same facilities, and indeed, found such sharing to be in the public interest:

39. Discussion. We are eliminating the restriction that prohibits the use of transmitters used in common carrier stations from being used for non-common carrier purposes. Licensees who operate common carrier stations will be able to provide private services at the same location without having to construct duplicative facilities. This action will promote economic efficiencies by reducing construction and operating costs associated with operating separate facilities. Further, this is consistent with our recent action of eliminating a similar restriction in Part 22 of the rules.

11 FCC Rcd at 13466 (footnotes omitted).

Many of UTC's member companies with private microwave systems have been approached by personal communications service (PCS) licensees, cellular carriers, specialized mobile radio (SMR) licensees, rural telephone companies, and others about the possibility of leasing reserve capacity on the licensees' private microwave systems. In many cases, the microwave licensees are leasing antenna tower space to these carriers or commercial mobile radio service (CMRS) providers, and would be willing to provide microwave capacity, on a private carrier basis, to these carriers for their cellsite interconnect. In one situation, a rural telephone company sought to extend additional service into a very remote part of its operating area where the local utility currently operates a private microwave system. However, under the current rules, a private microwave licensee can enter such an arrangement with a carrier only if it is willing to relicense its microwave system as "common carrier" and take on the trappings and responsibilities of a microwave common carrier.

UTC understands that there may be reluctance to completely eliminate the permissible use restrictions between private and common carrier microwave systems, or to adopt a "predominant use" test for determining whether a given system should be licensed as private or common carrier. UTC believes, however, that a limited amendment of Section 101.135 of the Rules would allow this type of spectrum-conserving, pro-competitive sharing while still retaining the traditional distinctions between private and common carrier microwave systems. The following is a suggested amendment (new language is underlined; deleted language is ~~interlined~~):

**§101.135. Shared use of radio stations and the offering of private carrier services.**

Licensees of Private Operational Fixed Point-to-Point Microwave radio stations may share the use of their facilities on a non-profit basis or may offer service on a for-profit private carrier basis, subject to the following conditions and limitations:

(a) Persons or governmental entities licensed to operate radio systems on any of the private radio frequencies set out in §101.101 may share such systems with, or provide private carrier service to, any person eligible for licensing under this part, regardless of individual eligibility restrictions, provided that the communications being carried are permissible under ~~§101.603~~ §§101.603(a) and 101.603(b)(2) - (3). . . .

This amendment would parallel the change effected through Section 101.133 which permits transmitters licensed for common carrier services to be concurrently used for non-common carrier communications purposes. This amendment also would conform the use of private microwave systems to the current regulatory scheme for non-microwave communications technologies. For example, an entity owning private fiber optic communications facilities or satellite transponder capacity may share or lease that capacity, on a private carrier basis, to any entity, including common carriers, without becoming a communications common carrier.

Enforcement of the current regulation, which restricts common carriers to leasing microwave capacity only from other common carriers, is inconsistent with Section 10 of the Communications Act, 47 U.S.C. §160, since (1) it is "not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;" (2) it is "not necessary for the protection of consumers;" and (3) elimination of this restriction is "consistent with the public interest" since it will conserve spectrum, lead to more timely initiation of service, and minimize environmental and economic impacts of constructing redundant communications paths. For all of these reasons, elimination of the requirement will promote competition among telecommunications carriers, and is therefore presumptively in the public interest under Section 10(b).

UTC recognizes that its request for elimination of this requirement was filed in the context of WT Docket No. 94-148, and not in a formal petition for forbearance under Section 10(c). However, there is nothing in Section 10 to indicate that the Commission's forbearance authority may only be exercised in response to a petition under Section 10(c); indeed, Section 10(c) merely provides that a carrier "may" petition the FCC to exercise its forbearance authority, which petition will be deemed granted if not acted upon within one year.

Ms. D'wana Terry  
April 24, 1998  
Page 4

Elimination of this restriction would also be consistent with the Commission's biennial review of regulations, conducted pursuant to Section 11 of the Communications Act, 47 U.S.C. §161. The restriction on carrier leasing of private microwave capacity "is no longer necessary in the public interest as the result of meaningful economic competition between providers of such services." 47 U.S.C. §161(a)(2). Entities wishing to provide telecommunications services have various options available, including the licensing of their own common carrier microwave systems on the same frequencies available to private system users. Thus, there is no justifiable reason to prevent common carriers from leasing microwave capacity on private microwave systems.

In conclusion, UTC believes that significant relief can be afforded that will conserve spectrum and promote the deregulatory and procompetitive policies of the Telecommunications Act, while maintaining the traditional distinctions between private and common carrier microwave systems. For all of the foregoing reasons, UTC renews its request that the Commission move promptly to eliminate the anachronistic restriction on the sharing of private microwave capacity with entities proposing to use the shared capacity to relay common carrier traffic.

Very truly yours,



Jeffrey L. Sheldon  
General Counsel

cc: Herbert Zeiler, FCC  
Robert James, FCC  
Michael Wilhelm, FCC  
Michael Pollak, FCC  
Josh Roland, FCC